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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,733	07/25/2007	**D'art Daniel David Braeder**	679-009	9559

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EXAMINER	
PRANGE, SHARON M	

ART UNIT	PAPER NUMBER
3728	

MAIL DATE	DELIVERY MODE
09/15/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/598,733	BRAEDER ET AL.	
	Examiner	Art Unit	
	SHARON M. PRANGE	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *5/18/09*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *21-27 and 29-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *21-27, 29-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *5/27/09*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The Amendment filed May 18, 2009 has been entered. Claims 22-27 and 29-39 remain pending in this application, claim 28 has been canceled and claim 40 has been added. The previous 35 USC 112 rejection of claim 31 has been withdrawn in light of Applicant's amendment to claim 31.

Claim Objections

1. Claims 23 and 40 are objected to because of the following informalities: Claims 23 and 40 recite the limitation "transposed minor image" in lines 3 and 2, respectively. It appears that this limitation should read "transposed mirror image." Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 27 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 27 recites the limitation "said weakened region" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 39 recites the limitation "the epoxy and hardener" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 22-27, 29-31, 36, 37, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP-3059476, herein JP '476, in view of Rosen et al. (US Patent No. 7,241,066), herein Rosen.

JP '476 discloses a dispensing device having a respective receptacle (3) for each of two substances (A, B), and a line of fold (2) between the receptacles. The device is foldable about the line of fold so that the receptacles are superimposed (Fig. 1, 3). A rupturable outlet (5) is defined for each receptacle. The outlets converge towards the line of fold (Fig. 2). When the device is folded the outlets are superposed for dispensing and mixing the two substances, and may be manipulated by a user in a one-handed operation (Fig. 5). The receptacles and outlets are disposed so that they are transposed

mirror images of each other about the line of fold. The outlets include a weakened region in the form of a tear line (6). The device has two flexible laminae (3, 7) which are sealed together to define the two receptacle (Fig. 2). The outlets are capable of being aligned in a one-handed operation and the substances simultaneously dispensed, mixed, and applied (Fig. 5).

JP '476 does not disclose indicia on the device.

Rosen teaches providing indicia on a single-use dispensing device in order to instruct a user how to open and use the device (column 6, lines 32-50; column 10, lines 46-55; column 24, lines 30-35). It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided indicia, as taught by Rosen, on the device of JP '476 in order to help instruct a user on how to open and use the device.

The combination of JP '476 and Rosen discloses the claimed invention except for the specific arrangement and/or content of indicia (printed matter) set forth in the claim(s). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included indicia indicating the placement of a thumb and forefinger of a user since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of indicia does not alter the functional relationship. Mere support by the substrate for the

printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter e.g. indicia and the substrate e.g. dispensing device which is required for patentability.

Regarding claims 30 and 31, the combination of JP '476 and Rosen discloses the claimed invention except for the material of the laminae. It would have been obvious to one having ordinary skill in the art at the time the invention was made to used, for example, foil or polyethylene in order to use inexpensive materials which are watertight. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '476 and Rosen, as applied to claims 22-27, 29-31, 36, 37, and 40, further in view of Fukushima (US Patent No. 4,790,429).

JP '476 does not disclose the type of substances stored in the receptacles.

Fukushima teaches that foodstuffs or medical substances may be stored in a single-use dispensing device with two separate receptacles (column 1, lines 48-51). It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided foodstuffs or medical substances in the dispensing device of JP '476 as it is well known to provide these substances in a container in which they are stored separately but then dispensed and mixed simultaneously.

8. Claims 32, 33, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '476 and Rosen, as applied to claims 22-27, 29-31, 36, 37, and 40, further in view of Bollmeier (US Patent No. 3,074,544).

JP '476 does not disclose the type of substances stored in the receptacles.

Fukushima teaches that epoxy and a hardener (curing agent) may be stored in a single-use dispensing device with two separate receptacles (column 1, lines 61-70). It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided epoxy and a hardener in the dispensing device of JP '476 as it is well known to provide these substances in a container in which they are stored separately but then mixed together and dispensed

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Response to Arguments

9. Applicant's arguments with respect to claims 22-39 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHARON M. PRANGE whose telephone number is (571)270-5280. The examiner can normally be reached on M-F 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. M. P./ 9/10/09 /Mickey Yu/

Examiner, Art Unit 3728

Supervisory Patent Examiner, Art Unit 3728